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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1958.

No. 565.

FRANK L. DITTMEIER,
Petitioner,

vs.

MISSOURI REAL ESTATE COMMISSION,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION.

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OPINIONS BELOW.

The petition herein (pp. 1-3) sets out the opinions of the courts below which are involved in this case.

JURISDICTION.

The petitioner herein relies upon the provisions of Section 125 (3) of Title 28, U. S. C. A., as authority for the Court to consider the petition.

QUESTION PRESENTED.

The only question which might properly be before this Court on the review of this cause would be whether or not, when the petitioner's license as a real estate broker had been suspended by respondent for a period of six months after a full administrative hearing on three counts of misconduct charges and the reviewing court found that the findings on one of the charges against the petitioner were supported by substantial and competent evidence and remanded the matter to respondent with directions to set aside its previous order and "to set aside its assessment of a six months' suspension as a penalty for the violation of Sections 10 (a) and 10 (g) of said [Missouri Real Estate Commission] Act and for the assessment of whatever penalty in its discretion the Commission may deem proper under the circumstances for the violation of Section 10 (g) of said Act," the Due Process Clause of Amendment XIV to the Constitution of the United States was violated by the action of the respondent in entering a new order pursuant to the judgment of the reviewing court without giving petitioner notice of its intention to enter such new order and an opportunity to be heard before respondent prior to the entry of such new order.

The other matters referred to by petitioner in his statement of the questions presented (Petition, pp. 3-5) would not be before the Court because they were never presented in the state courts as involving federal constitutional considerations.

CONSTITUTIONAL PROVISIONS INVOLVED.

The provisions of the XIV Amendment to the Constitution of the United States set out in the petition (p. 7) would be involved.

STATUTES INVOLVED.

Respondent feels that no statutory provisions would be properly before this Court on review of this cause.

STATEMENT OF FACTS.

The petition (pp. 7-11) sets out the fact material to the consideration of the question presented. The last two paragraphs of such statement refer to matters which, in respondent's view, would not be before this Court on review.

QUESTIONS RAISED BELOW.

The judicial action presently sought to be reviewed was begun by the filing, on June 30, 1951, of a petition (Transcript, pp. 1-11) by the petitioner herein in the Circuit Court for the City of St. Louis, in which he sought the review of an order of the respondent served upon the petitioner on June 28, 1951. Such petition sought to have said order set aside upon numerous grounds. Among such grounds were the following which presented questions under the Constitution of the United States:

> "17. That the said finding, decision and order is in violation of Article I, Section 10 of the Constitution of Missouri, 1945, and the 14th Amendment to the Constitution of the United States, which provide that no person shall be deprived of life, liberty and property without due process of law; and by failing to give petitioner notice of any kind and an opportunity to appear and be heard with respect to the action to be taken by the Commission, the Commission has denied to petitioner due process of law" (Transcript, pp. 4-5).

Paragraph 26 of the petition (Transcript, p. 6) also attacked the validity under the Due Process Clause of the

XIV Amendment to the Constitution of the United States, the statute under which the respondent acted, on the grounds that such statute set up no ascertainable standards of guilt. This contention, however, was not urged in the Supreme Court of Missouri.

Paragraph 18 of the petition for review set forth the following allegations of grounds for the setting aside of the order of respondent:

> "18. That no hearing of any kind was held with respect to the said finding, decision and order and the same was arbitrarily entered by the Missouri Real Estate Commission; that the Commission followed no lawful procedure in making and entering the same and said finding, order and decision is both arbitrary and capricious" (Transcript, p. 5).

It is to be noted that no reliance upon the Constitution of the United States was made in this regard.

In his motion for new trial in the Circuit Court, petitioner set forth, in paragraph 7 thereof (Transcript, 48), grounds practically identical with those found in paragraph 17 of his petition in the Circuit Court, and quoted above. Other than a repetition of the grounds alleged in paragraph 26 of the petition, above referred to, and not relied upon in the Supreme Court of Missouri, no reference to federal constitutional provisions is to be found in petitioner's motion for new trial.

In paragraph 11 of said motion for new trial, the petitioner expanded upon his allegations of paragraph 18 of his petition, wherein he alleged that the order of the Commission was made upon unlawful procedure as follows:

> "11. That the Court erred in failing to find, and in failing to reverse the order of the Commission upon the ground that the personnel of the Commission be-

tween the date of the original order and the date of the order herein reviewed has changed, that the record of the proceeding filed in this Court as the entire record does not disclose that Frank Woodward, the new Commissioner, ever read the evidence in this cause, and said Woodward did not hear the case, and the decision of the Commission was rendered without affording petitioner an opportunity to present arguments, either oral or written, to the officials who rendered the decision, including Frank Woodward; and the record, certified as being the entire record of the Commission, wholly fails to disclose that the officials who rendered the decision personally considered the whole record before deciding the case, all in violation of Section 536.080, R. S. Mo. 1949; and the decision and order of the Commission was therefore made upon unlawful procedure and in excess of the statutory authority of the Commission" (Transcript, pp. 49-50).

The Supreme Court of Missouri in its opinion stated the principal contention of the petitioner in that Court as follows (316 S. W. 2d, l. c. 4, Petition, p. 56):

"The main contention of appellant presented in the trial court and kept alive here is that the failure of the Commission to give him notice and an opportunity to be heard with respect to the order to be entered upon receipt of the mandate of the Court of Appeals deprived appellant of his property without due process of law in contravention of Amendment XIV of the Constitution of the United States and Article 1, § 10, Mo. Const. 1945."

ARGUMENT.

There is no special and important reason why this Court should review the decision of the Supreme Court of Missouri in this case. The Missouri court did not decide a federal question of substance not heretofore determined by this Court, nor did it decide the matter in a way not in accord with the applicable decisions of this Court.

The only question which would be before the Court, should it determine to review the decision of the Missouri Court, would be whether or not the Due Process Clause of the XIV Amendment to the Constitution of the United States required a further hearing before the respondent, prior to the entry of a new order, after the original order, entered upon a full and complete administrative hearing in which the respondent had fully participated, had been set aside.

The controlling principle in the determination of this question is laid down by this Court in the case of **Opp Cotton Mills, Inc. v. Administrator of the Wage and Hour Division of the Department of Labor**, 312 U. S. 126, 61 S. Ct. 524, 80 L. Ed. 624. In that case, the court stated, 312 U. S., l. c. 152:

> "The demands of due process do not require a hearing at the initial stage, or at any particular point, **or at more than one point in an administrative proceeding**, so long as the requisite hearing is held before the final order becomes effective." (Emphasis supplied.)

See also **Inland Empire District v. Millis**, 325 U. S. 697, 710, 65 S. Ct. 1316, 89 L. Ed. 1877.

Here, the petitioner was accorded a full and complete hearing before the respondent on the charges against him.

He was accorded the hearing which due process of law required, and no further or additional hearing was required under federal constitutional provisions. The decision of the Missouri Supreme Court in this regard is fully in accord with the above-cited decisions of this Court.

As for the right to present argument to Commissioner Woodward, the member of the respondent Commission who was appointed subsequent to the original hearing, as above pointed out, the basis of error in that regard upon which the petitioner relied in the state courts was that Missouri statutory provisions regarding administrative proceedings had not been complied with. No federal constitutional provision was relied upon. In order for a federal constitutional question to be considered by this Court, the question must have been raised in the state court. **Memphis Natural Gas Co. v. Beeler**, 315 U. S. 649, 62 S. Ct. 857, 86 L. Ed. 1090. Having raised but one federal question in his petition in the state court, the petitioner may not now raise the additional question upon which his principal reliance is placed in this Court. **Keokuk and Hamilton Bridge Co. v. People of State of Illinois**, 175 U. S. 626, 20 S. Ct. 205, 44 L. Ed. 299.

In view of the fact that the grounds for review most strongly relied upon by the petitioner in this Court were never presented to the courts of Missouri, that question cannot be the basis for review in this Court. The only question which was properly presented to, and considered by, the Missouri Supreme Court was correctly decided by that Court and affords no reason for the granting of the writ of certiorari in this case.

CONCLUSION.

Respondent respectfully submits that the petition for certiorari should be denied.

Respectfully submitted,

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